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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,494	03/24/2006	Hiroto Tanikawa	G&P-5253	9326

7590 02/18/2009
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EXAMINER

WATTS, JENNA A

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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02/18/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/573,494	Applicant(s) TANIKAWA ET AL.	
	Examiner JENNA A. WATTS	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,4,6 and 8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 2,4,6, and 8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20060324</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kato et al. (JP Patent No. 56-24506) in view of Cassetta et al. (U.S. Patent No. 5,780,091), and further view of Nelson et al. (6,083,545).

5. Kato teaches a method for making filled snacks, such as wontons (Pages 4 and 5, Column 8, lines 38-44 and Column 9, lines 1-15 of JP Patent) that is dried by non-oil-frying (Pages 4 and 5, Column 8, lines 38-44 and Column 9, lines 1-15 of JP Patent). Regarding steps (a) and (b), Kato teaches kneading a wheat flour mixture of wheat flour, starch and gluten and water and rolling said dough to prepare a large or broad dough sheet (Pages 4 and 5, Column 8, lines 38-44 and Column 9, lines 1-15 of JP Patent). Kato teaches that the dough is mixed to uniformity and then extended/stretched to a certain thickness to form a dough skin, and this is understood to mean that the dough is rolled to prepare a large or broad dough sheet. Regarding step (c), Kato teaches that the thin dough sheet is cut into 70 mm square shaped skins or wraps, and the skins or wraps are further steamed (Pages 4 and 5, Column 8, lines 38-44 and Column 9, lines 1-15 of JP Patent). Thus, the large or broad dough sheet is formed into a plurality of sections of a specified size and shape.

6. Regarding step (d) and (e), Kato teaches that the resulting square -shaped skins of dough are filled with freeze-dried pork filling and the perimeters of the dough skin are joined together by compression, such that the wrap does not fall apart (Page 5, Column 9, lines 1-15 of JP Patent). Since Kato teaches that the perimeters of the dough skin are joined together, it would be expected that the opposite edges would be joined in order to close the skin/wrap of dough. Regarding step (f), Kato further teaches that the resulting

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wontons are dried with air at 90°C (Page 5, Column 9, lines 1-15 of JP Patent). Thus, the filled snacks or wontons are dried by means other than oil frying. Kato further teaches that after the drying step, the wontons are ready to eat (Page 5, Column 9, lines 1-15 of JP Patent). The wontons as taught by Kato are deemed wrapped dumplings, because they are filled and enclosed dough products.

7. Regarding step (c), Kato does not teach that the rolled dough sheet is steamed prior to being cut into a plurality of smaller sections.

8. Cassetta teaches a method of forming conventional instant noodles and an instant pasta product interleaved with sauce (Column 1, lines 9-10 and Column 2, line 22), wherein a dough is formed, and it is then made into a sheet by conventional roller/sheeters (Column 3, lines 29-30). The sheet is steamed to partially cook it, gelatinize it, improve its elasticity and reduce the stickiness of the product, the steaming step being necessary for instant noodles (Column 3, lines 39-40 and 43-44). Cassetta further teaches adding a dry sauce to the pasta sheets to prepare the instant pasta product (Column 3, lines 60-61 and Column 4, lines 1-2). It is noted that applicant discloses that the filled snacks made from dough are considered “instant” food products (see instant specification, Page 1, lines 5-6) and also teaches that the invention can be used to make other filled products, such as lasagna, which is understood to imply a pasta product interleaved with sauce (see instant specification, Page 13, line 26).

9. It would have been obvious for one of ordinary skill in the art at the time of the invention for the method of forming a filled snack as taught by Kato to have included the

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steaming step prior to the cutting step because Cassetta teaches that such a method is used for the manufacturing of conventional instant noodles that can further be used to prepare a filled dough product. One of ordinary skill in the art would have been motivated to use a known method because such a method would be expected to have a certain degree of success and would thus be suitable for the purpose of preparing a filled dough product.

10. Regarding step (f), Kato in view of Cassetta do not teach that the opposite ends of each of the dough sections are thermally compressed together so that they are joined.

11. Nelson teaches an improved method for sealing the seams of ravioli in commercial production (see abstract). Nelson teaches preparing filled pasta pockets, such as ravioli or other filled pasta pockets (Column 1, lines 33-35), and teaches that commercial production of ravioli has been limited because of the difficulty in ensuring the integrity of the pasta dough seams surrounding the filling (Column 1, lines 18-20). Nelson teaches a method that overcomes the shortcomings of the prior art (Column 1, lines 30-31) by applying hot air to the top and bottom sheets/layers of pasta in the filled pasta pocket, in order to raise the temperature of the top and bottom sheets/layers as the two sheets/layers are sealed together in their peripheral regions (Column 5, lines 5-13 and Column 6, lines 1-10). Nelson further teaches that the plurality of filled pasta pockets is then compressed together to seal the top and bottom sheets of pasta dough together. The top and bottom sheets are situated opposite from each other, and in this

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way, it is deemed that Nelson is teaching the thermal compression of the opposite edges of the filled pasta products so that they are joined.

12. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for the method of forming a filled snack, as taught by Kato in view of Cassetta, to have included the step of thermally compressing the opposite edges of the filled snack because Nelson teaches that the use of thermal compression ensures the sealing of the seams of a filled product, such as ravioli, in a commercial setting. One of ordinary skill in the art would have been motivated to use thermal compression in the sealing of the seams of a filled snack food in order to ensure that the integrity of the seams are maintained to prevent product loss during processing and to ensure consumer satisfaction when the product is in use.

13. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kato et al. (JP Patent No. 56-24506) in view of Cassetta et al. (U.S. Patent No. 5,780,091), and in further view of Rouse et al. (U.S. Patent No. 3,012, 697).

14. Kato teaches a method for making filled snacks, such as wontons (Pages 4 and 5, Column 8, lines 38-44 and Column 9, lines 1-15 of JP Patent) that is dried by non-oil-frying (Pages 4 and 5, Column 8, lines 38-44 and Column 9, lines 1-15 of JP Patent). Regarding steps (a) and (b), Kato teaches kneading a wheat flour mixture of wheat flour, starch and gluten and water and rolling said dough to prepare a large or broad dough sheet (Pages 4 and 5, Column 8, lines 38-44 and Column 9, lines 1-15 of JP Patent). Kato teaches that the dough is mixed to uniformity and then extended/stretched

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to a certain thickness to form a dough skin, and this is understood to mean that the dough is rolled to prepare a large or broad dough sheet. Regarding steps (c) and (f), Kato teaches that the thin dough sheet is cut into 70 mm square shaped skins or wraps, and the skins or wraps are further steamed (Pages 4 and 5, Column 8, lines 38-44 and Column 9, lines 1-15 of JP Patent). Thus, the large or broad dough sheet is formed into a plurality of sections of a specified size and shape.

15. Regarding steps (g) and (h), Kato teaches that the resulting square -shaped skins of dough are filled with freeze-dried pork filling and the perimeters of the dough skin are joined together by compression, such that the wrap does not fall apart (Page 5, Column 9, lines 1-15 of JP Patent). Since Kato teaches that the perimeters of the dough skin are joined together, it would be expected that the opposite edges would be joined in order to close the skin/wrap of dough. Regarding step (i), Kato further teaches that the resulting wontons are dried with air at 90°C (Page 5, Column 9, lines 1-15 of JP Patent). Thus, the filled snacks or wontons are dried by means other than oil frying. Kato further teaches that after the drying step, the wontons are ready to eat (Page 5, Column 9, lines 1-15 of JP Patent). The wontons as taught by Kato are deemed wrapped dumplings, because they are filled and enclosed dough products.

16. Regarding steps (c) and (f), Kato does not teach that the rolled broad dough sheet is steamed prior to being cut into a plurality of sections of a specified size and a specified shape.

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17. Cassetta teaches a method of forming conventional instant noodles and an instant pasta product interleaved with sauce (Column 1, lines 9-10 and Column 2, line 22), wherein a dough is formed, and it is then made into a sheet by conventional roller/sheeters (Column 3, lines 29-30). The sheet is steamed to partially cook it, gelatinize it, improve its elasticity and reduce the stickiness of the product, the steaming step being necessary for instant noodles (Column 3, lines 39-40 and 43-44). Cassetta further teaches adding a dry sauce to the pasta sheets to prepare the instant pasta product (Column 3, lines 60-61 and Column 4, lines 1-2). Applicant discloses that the filled snacks made from dough are considered "instant" food products (see instant specification, Page 1, lines 5-6) and also teaches that the invention can be used to make other filled products, such as lasagna, which is understood to imply a pasta product interleaved with sauce (see instant specification, Page 13, line 26).

18. Therefore, it would have been obvious for one of ordinary skill in the art at the time of the invention for the method of forming a filled snack as taught by Kato to have included the steaming step prior to the cutting step because Cassetta teaches that such a method is used for the manufacturing of conventional instant noodles that can further be used to prepare a filled dough product. One of ordinary skill in the art would have been motivated to use a known method because such a method would be expected to have some degree of success and would thus be suitable for the purpose of preparing a filled dough product.

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19. Regarding step (d), Kato does not specifically teach that the broad dough sheet is transported. Cassetta teaches an automated process of making a filled dough product, wherein the pasta sheet is transported/conveyed along a conveyor belt as it is processed into a pasta product interleaved with sauce (Column 2, lines 60-61 and Figures 1 and 2). Cassetta further teaches that the broad dough sheet layered with sauce is then cut into selected/specified widths to prepare a plurality of dough strips of selected, and thus narrower, widths, via means known in the art (see Figure 2, reference #34, Column 3, lines 7-9 and Column 4, lines 12-13).

20. It would have been obvious to one of ordinary skill in the art at the time of the invention for the method of producing a filled snack, as taught by Kato, to include a step of transporting a dough sheet, as taught by Cassetta, because Cassetta teaches an automated process of making a filled dough product using a conveyor belt as a transport means. One of ordinary skill in the art would have been motivated by economical reasons to use a conveyor belt to transport the dough sheet to further processing steps in order to increase the overall productivity of the system.

21. Furthermore, it has been found that “broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art.” See MPEP 2144.04 III. In the instant case, Kato teaches a method of preparing a filled dough product wherein the filled snacks are formed into a specified size and shape from the larger dough sheet (Pages 4 and 5, Column 8, lines 38-44 and Column 9, lines 1-15 of JP Patent). Automating such an activity to include a step of transporting the dough, as taught by Cassetta,

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would not materially affect the end product, it would merely increase the efficiency of the system.

22. Regarding step (e), Kato does not specifically teach that the broad dough sheet is slit as it has been transported, into specified widths to prepare a plurality of dough strips of narrower width, before it cuts the strips into specified sizes and shapes. However, it would be expected that multiple cuts would be required to arrive at a square shaped wonton, and changing the configuration or shape of an object has been found to be a matter of choice which a person of ordinary skill in the art would have found obvious, absent evidence that the particular configuration or shape of the claimed object was significant. See MPEP 2144.04 B. One of ordinary skill in the art would have been motivated to arrive at the square-shaped wonton, from the broad dough sheet, in the most efficient way possible.

23. Regarding step (i), Kato in view of Cassetta teach dusting the dough with a dusting agent and teach using a conveyor to transport the dough through the processing steps (see Cassetta, Column 2, lines 57-58 and 60-64) but do not specifically teach that a powder is applied to the surface of a conveying belt for transporting said broad dough sheet in an amount ranging from 0.0014 g/cm^2 to 0.0222 g/cm^2 .

24. Rouse teaches the dusting and spreading of a film or layer of a particled material, such as flour, on a belt that carries dough from one stage in its preparation to another to

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prevent the dough from sticking to the belt (Column 1, lines 15-19). Rouse further teaches that the ability of the operator to vary the rate of application of the flour enhances the versatility of the device for use with doughs of different character and with the speeds of movement of the conveyor belt (Column 3, lines 42-44). Thus, Rouse teaches that the rate of application can translate to the amount of flour falling and collecting on the belt, and this could vary according to the type of dough being used, and the speed of the conveyor belt chosen. A particled material, such as flour, is deemed a type of powder.

25. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for the optimum amount of powder to be applied to the surface of the conveyor belt in order to prevent the dough from sticking, as taught by Rouse. One of ordinary skill in the art would have been motivated by economic reasons to use a minimal amount of flour/powder, while still ensuring that the dough did not stick to the surface of the conveyor belt during further processing. Furthermore, the particular amount of powder/flour applied to the conveyor belt does not appear to provide a patentable distinction of the claimed subject matter, absent any evidence to the contrary.

26. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kato et al. (JP Patent No. 56-24506) in view of Cassetta et al. (U.S. Patent No. 5,780,091) and Rouse et al. (U.S. Patent No. 3,012, 697), and in further view of Poon (U.S. Patent No. 3,489,105).

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27. Kato in view of Cassetta and Rouse are relied upon as above for the rejection of Claim 4.

28. Kato in view of Cassetta and Rouse teach dusting the dough with a dusting agent to prevent the rolled layers of dough from sticking to each other, and teach that selected starches can also be used for this purpose (see Cassetta, Column 3, lines 55-59 and Column 5, lines 2-3), and they also teach dusting the surface of the conveyor with flour to prevent the dough from sticking to the conveyor (See Rouse, Column 1, lines 15-19).

29. However, Kato in view of Cassetta and Rouse do not teach that the powder applied to the conveyor belt is a starch powder that is one of potato starch, tapioca starch, corn starch and sago starch.

30. Poon teaches an improved process of making dough to be used for the wrapping of various foods such as wontons (Column 1, lines 20-25), wherein the dough is continually dusted with corn starch while it is being processed in the dough machine (Column 1, lines 42-43 and Column 2, lines 16-17 and 23-25). It is understood that the dough is dusted with corn starch to prevent it from sticking to the dough machine during processing.

31. Rouse and Poon are solving a similar problem of ensuring that dough is processing without sticking to the machinery or conveyor belt.

32. Therefore, it would have been obvious for one of ordinary skill in the art at the time of the invention to substitute flour, as taught by Rouse, with corn starch, as taught by Poon, because such a functional substitution would not materially affect the objective of ensuring the dough does not stick to the conveyor belt. Corn starch is known in the

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prior art as an anti-sticking agent and one of ordinary skill could have replaced the flour of Rouse with the corn starch of Poon with a reasonable prediction of success that the corn starch would perform the same anti-sticking function as the flour. See MPEP 2143 Rationale B.

33. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kato (JP Patent No. 56-24506) in view of Cassetta et al. (U.S. Patent No. 5,780,091), and Rouse et al. (U.S. Patent No. 3,012, 697), and in further view of Nelson et al. (U.S. Patent No. 6,083,545).

34. Kato in view of Cassetta and Rouse are relied upon as above for the rejection of Claim 4.

35. Kato in view of Cassetta and Rouse teach that the perimeters, and thus the opposite edges of each of the sections of the dough are joined together by compression, such that the wonton does not fall apart (see Kato, Page 5, Column 9, lines 1-15 of JP Patent).

36. However, Kato in view of Cassetta and Rouse do not teach that the opposite edges of each of said sections are thermally compressed together so that they are joined.

37. Nelson teaches an improved method for sealing the seams of filled pasta pockets (Column 1, lines 33-35) in commercial production (see abstract). Nelson teaches preparing filled pasta pockets, such as ravioli or other filled pasta pockets (Column 1, lines 33-35), and teaches that commercial production of ravioli has been limited

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because of the difficulty in ensuring the integrity of the pasta dough seams surrounding the filling (Column 1, lines 18-20). Nelson teaches a method that overcomes the shortcomings of the prior art (Column 1, lines 30-31) by applying hot air to the top and bottom sheets/layers of pasta in the filled pasta pocket, in order to raise the temperature of the top and bottom sheets/layers as the two sheets/layers are sealed together in their peripheral regions (Column 5, lines 5-13 and Column 6, lines 1-10). Nelson further teaches that the plurality of filled pasta pockets is then compressed together to seal the top and bottom sheets of pasta dough together. The top and bottom sheets are situated opposite from each other, and in this way, it is deemed that Nelson is teaching the thermal compression of the opposite edges of the filled pasta products so that they are joined.

38. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for the method of forming a filled snack, as taught by Kato in view of Cassetta and Rousse, to have included the step of thermally compressing the opposite edges of the filled snack because Nelson teaches that the use of thermal compression ensures the sealing of the seams of a filled product, such as ravioli, in a commercial setting. One of ordinary skill in the art would have been motivated to use thermal compression in the sealing of the seams of a filled snack food in order to ensure that the integrity of the seams are maintained to prevent product loss during processing and to ensure consumer satisfaction when the product is in use.

Examiner's Comment

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A complete translation of JP Patent No. 56-24506 has been requested from Translation's Branch.

Conclusion

38. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNA A. WATTS whose telephone number is (571) 270-7368. The examiner can normally be reached on Monday-Friday 8am-4:30pm.

39. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

40. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. A. W./
J. Watts
Examiner, Art Unit 1794
February 12, 2009

/KEITH D. HENDRICKS/
Supervisory Patent Examiner, Art Unit 1794